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NTSB Order No. EA-4162

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 2nd day of May, 1994

_____)	
DAVID R. HINSON,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-12144
v.)	
)	
FRANCISCO JOSE CHINCHILLA,)	
)	
Respondent.)	
)	
_____)	

OPINION AND ORDER

The Administrator has appealed from the oral initial decision of Administrative Law Judge William R. Mullins, issued at the conclusion of an evidentiary hearing held on March 26, 1992.¹ In that decision, the law judge affirmed, in part, an order of the Administrator revoking respondent's mechanic certificate with airframe and powerplant (A&P) rating on

¹Attached is an excerpt from the hearing transcript containing the oral initial decision.

allegations that respondent falsified entries in an aircraft maintenance logbook. The law judge affirmed the order only as to the allegation of a violation of section 43.13(a) of the Federal Aviation Regulations (FAR), 14 C.F.R. Part 43. He found insufficient evidence to sustain allegations of violations of FAR sections 43.12(a)(1), 43.13(b), and 43.5(b).² He further determined that the Administrator had failed to establish that respondent lacks the qualifications to hold a mechanic

²FAR §§ 43.12(a)(1), 43.13(a) and (b), and 43.5(b) provide in pertinent part as follows:

§ 43.12 Maintenance records: Falsification, reproduction or alteration.

(a) No person may make or cause to be made:

(1) Any fraudulent or intentionally false entry in any record or report that is required to be made, kept, or used to show compliance with any requirement under this part...

§ 43.13 Performance rules (general).

(a) Each person performing maintenance, alteration, or preventive maintenance on an aircraft...shall use the methods, techniques, and practices prescribed in the current manufacturer's maintenance manual or Instructions for Continued Airworthiness prepared by its manufacturer, or other methods, techniques, and practices acceptable to the Administrator....

(b) Each person maintaining or altering, or performing preventive maintenance, shall do that work in such a manner and use materials of such a quality, that the condition of the aircraft...worked on will be at least equal to its original or properly altered condition....

§ 43.5 Approval for return to service after maintenance, preventive maintenance, rebuilding, or alteration.

No person may approve for return to service any aircraft...that has undergone maintenance, preventive maintenance, rebuilding, or alteration unless....

(b) The repair or alteration form authorized by or furnished by the Administrator has been executed in a manner prescribed by the Administrator....

certificate and affirmed a 30-day suspension of respondent's certificate rather than revocation.

The Administrator asserts on appeal that the law judge erred in finding that it was not material for respondent to sign the name of another mechanic in an aircraft maintenance logbook. The Administrator further argues that if the Board finds that this false entry is material, revocation of respondent's mechanic certificate is warranted. Respondent has filed a brief in reply, urging the Board to affirm the law judge's order.³ For the reasons that follow, we will deny the appeal and affirm the initial decision.

On April 1, 1990, Continental Airlines Flight No. 1 turned back shortly after its departure from Los Angeles International Airport (LAX), because its main landing gear would not retract. It was subsequently determined that, on the previous night, repairs had been performed on the aircraft's landing gear at Continental's LAX Maintenance Facility. Further investigation revealed that the work, replacement of the right-hand body landing gear downlock actuator, was not performed in accordance with the maintenance manual, in that, contrary to maintenance logbook entries, the aircraft had not been raised on jacks so that an operational swing check could be performed before the aircraft was returned to service. The A&P certificates of the Quality Control Supervisor and the Quality Control Inspector who

³The Board finds that respondent's request for oral argument on this issue is not necessary for the disposition of this matter.

returned the aircraft to service were revoked by the Administrator by emergency order.⁴ Respondent was an assistant maintenance supervisor at the LAX facility at the time the work was performed. The Administrator alleges that he made false entries into the logbook concerning the operational check, and that he signed the name and A&P certificate number of another mechanic, David Moosa, in the logbook, as the mechanic who had performed the work.

According to the record, the subject aircraft, a Boeing 747, was taken to the maintenance facility on the night of March 31, 1990, because the flight crew had reported that the aircraft had lost a hydraulic system during a gear extension. Because there were no DC-10 aircraft being worked on at the time, the maintenance supervisor assigned David Moosa, a DC-10 mechanic, to replace the actuator. Moosa testified that he understood that he and another DC-10 mechanic were supposed to assist respondent, who was the assistant maintenance supervisor for 747 aircraft during that shift. Moosa testified that he and respondent went together to obtain the replacement part from the parts store. He also testified that respondent "took over" the work when hydraulic fluid sprayed all over Moosa and he left the area to change his clothing. When Moosa returned, he claims that the installation of the actuator had been completed by respondent and the other mechanics. Moosa then verified the installation and

⁴The Board affirmed the revocation orders in Administrator v. Boggio and Stanton, NTSB Order No. EA-3194 (1990).

performed a leak check. He prepared a parts tag and a non-routine repair item card (see Exhibits R-3 and R-4) by indicating that he had installed the actuator and performed the leak check.

Moosa then signed his initials, clock number, and station to these documents, in accordance with Continental's operating procedures. (See Exhibit R-7).⁵ Moosa claims that he left the documents in the logbook since it was time for him to leave and because respondent said that he would "take care" of the paperwork. Moosa claims, however, that he had no idea that respondent would later sign Moosa's name and A&P certificate number into the logbook, although he acknowledges that it was not uncommon for assistant supervisors to sign for a mechanic's work.⁶

Respondent denies all culpability for this incident. He claims that he was working on another aircraft that evening and that he did not supervise the installation of the actuator. According to him, he just happened to walk past the 747 when Moosa got sprayed with fluid, and he then helped work on the aircraft while Moosa changed his clothing. Moosa also asked for respondent's assistance in the parts store, and respondent claims Moosa later asked him what else he should do and respondent told him to fill up the hydraulic system and do whatever else had to

⁵Moosa also filled out a maintenance worksheet. (TR-100). See Exhibit R-3.

⁶Respondent Boggio was found to have inserted the language "IAW MM 32-33-15" following respondent's entries into the logbook.

be done. Respondent claims that he then went back to work on another 747 and he did not observe the completion of Moosa's work.

Later that evening, respondent admits that he spoke with his supervisor, who told him that everything was done on the subject 747 except for the sign-off by an inspector. Respondent claims that he told his supervisor that a mechanic had to sign for the work performed, and he gave the logbook to the supervisor believing that the supervisor would sign for the mechanic because the supervisor had assigned the crew. However, respondent testified that his supervisor asked him to "transfer everything" from the parts tag and the non-routine repair item card into the logbook. Respondent asked his supervisor if an operational check had been performed, and, based on his supervisor's assurances, he wrote "ops check...good," in addition to transferring the information from the parts tag and the non-routine repair item card, into the logbook. Respondent then signed Moosa's name and certificate number below the entry.⁷

Respondent testified that he did not intend to make a false entry into the logbook, nor did he intend to forge Moosa's signature. Respondent claims that it was common practice to sign someone else's name in a logbook, and he claims that he did not know it was wrong to do so, because he had never taken

⁷Respondent's handwriting expert testified that in his opinion there was no attempt to simulate Moosa's signature. (TR-224).

Continental's logbook or general maintenance manual courses.⁸ In any event, respondent asserts, he only did what his supervisor told him to do. Respondent was later fired by Continental.⁹

The law judge clearly found respondent's testimony truthful. He accepted respondent's claims that he believed that Moosa had performed the operational check, and that he (respondent) was authorized to sign for Moosa in the logbook. The law judge resolved the inconsistencies between respondent's testimony and Moosa's testimony by finding that it was likely that the maintenance supervisor had told Moosa that if he had any problems he should ask respondent for help, and that is why Moosa believed respondent was supervising the installation of the actuator, but that the supervisor probably failed to inform respondent of this arrangement, and that is why respondent did not believe he had any supervisory responsibilities over Moosa.

⁸In support of his claim, respondent offered an excerpt from a Continental operations manual which indicates that an assistant supervisor may be required to sign for the work of a mechanic in his group (Exhibit R-22) and a subsequent letter to all inspectors which prohibits the past practice of permitting an inspector to sign-off work accomplished by another person by "signing his name and then by the person signing plus his Q/C stamp number" (Exhibit R-23). The Administrator presented a former Continental maintenance supervisor as a rebuttal witness who testified that he had never seen a supervisor sign the name of another mechanic in a logbook.

⁹Continental Airlines, Inc., has filed a motion to intervene and to re-open the record in this case because of testimony in the record which Continental's counsel believes unfairly characterizes the actions of Continental's management in regard to its handling of this matter. In the Board's view, the actions of management are irrelevant to our disposition of this proceeding, in which Continental is not a party. The motion to intervene is denied.

The law judge concluded that because respondent had not been assigned to work on the installation of the actuator or to supervise Moosa's work on the aircraft, respondent neither performed, nor was responsible for, the work performed on the aircraft by Moosa. We do not disagree.¹⁰ Whether this factual finding is consistent with the law judge's determination that respondent's conduct nonetheless supports a finding of a violation of FAR section 43.13(a) is an issue which is not before us, since respondent did not appeal the initial decision. See Administrator v. Hansen, NTSB Order No. EA-3903 at 7 (1993) (Flight engineer who held A&P certificate and who signed off in aircraft log based on mechanic's assurances that work had been accomplished, did not perform maintenance under FAR section 43.13(a)); Administrator v. Blanton, NTSB Order No. 3850 at 7, n. 11 (A mechanic's sign-off, whether or not for work personally performed, does not clearly fall within the definition of maintenance so as to hold the mechanic accountable under the performance standards of § 43.13 because he signed off for an inspection which he did not do.).

Turning to the falsification allegations, the law judge correctly noted that the elements necessary to prove an intentionally false statement are: (1) a false representation; (2) in reference to a material fact; and (3) made with knowledge

¹⁰The law judge also found that respondent should not be held accountable under FAR § 43.5(b) because he did not believe that he was returning the aircraft to service. The Administrator has not appealed this finding.

of its falsity. Hart v. McLucas, 535 F.2d 516 (9th Cir. 1976). Consistent with the factual allegations contained in the complaint, the law judge evaluated the entry concerning the performance of an operational check independently from the signature placed in the logbook. As to the statement that an operational check had been performed, the law judge found that respondent did not have actual knowledge that this statement was false, because he had been told by his supervisor that an operational check had in fact been performed. The Administrator has not appealed this finding.

The law judge proceeded to determine, however, that respondent had falsified the logbook by entering a signature that was not his own. He concluded, nevertheless, that no violation of FAR section 43.12 should be sustained on the theory that the falsity of the signature was not material. While we agree with the Administrator that this analysis is flawed,¹¹ in our view, the question of whether the signature was material need not have been reached because the law judge had already found that the placement of Moosa's signature in the logbook was not reflective of an intent to make a false entry.¹² Respondent had three

¹¹The determination as to whether the signature was material should have gone beyond the consideration of whether it was capable of influencing the inspectors that night. Accurate logbooks are critical to the FAA in the performance of its safety mission. Administrator v. Cassis, 4 NTSB 555, 557 (1982), recon. denied, 4 NTSB 562 (1983), aff'd Cassis v. Helms, 737 F.2d 545, 547 (6th Cir. 1984).

¹²Moreover, we think that the finding that the signature was false was inconsistent with the finding that the entry was not intentionally false.

documents in his possession, all of which Moosa had already initialed, and based upon which respondent could reasonably have concluded that it was Moosa who should sign the logbook for the work that had been performed. Respondent's supervisor had assured him that Moosa had performed the operational check. Finally, respondent believed, albeit erroneously, that it was permissible for him to sign Moosa's name in the logbook. We concur in the law judge's conclusion that, under these circumstances, respondent did not intentionally falsify the aircraft's maintenance logbook.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's appeal is denied;
2. The Administrator's order, as modified by the law judge's initial decision, and the initial decision are affirmed; and
3. The 30-day suspension of respondent's mechanic certificate with A&P rating shall commence 30 days after the service of this opinion and order.¹³

VOGT, Chairman, HALL, Vice Chairman, LAUBER and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

¹³For purposes of this order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR §61.19(f).